IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.5454/1997.

Bhanwarlal. **VERSUS** Assistant Collecotr, Keshorai Patan & Others.

08.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Tarun Jain, for the petitioner.
Mr.A.K.Bajpai, for the respondents.

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In this writ petition, the petitioner has challenged the order dated 01.10.1994 passed by the Assistant Collector, Keshorai Patan on the ground that on the said date the petitioner appeared and filed vakalatnama of his Advocate who in turn sought time to file reply/objection to the notice issued on the application filed by the respondent-Bank for proceedings under Section 5 of the Rajasthan Credit Operations (Removal of Difficulties) Act, 1974.

The contentions of the learned counsel for the petitioner are that the representative of the Bank, the petitioner and his counsel had appeared and sought time to file reply but instead the learned Assistant Collector passed an order whereby he has noted that no reply has been filed and as such the warrant for attachment of the property of the petitioner was issued. The said order reads as under :-

> "01.10.1994 पत्रावली पेश हुई । बैंक प्रतिनिधि उप. । बाकीदार भूरालाल उप. । बाकीदार की ओर से श्री महावीर प्रसाद जैन एड. ने वकालतनामा पेश किया । सा. मि. किया । बाकीदार द्वारा कोई जवाब नोटिस पेश नही किया । बाकीदार का चल सम्पति कुर्की वारन्ट जारी किया जाकर दिनांक 3/12/94 को पेश हो ।"

The petitioner feeling aggrieved by the aforesaid order preferred an appeal before the learned District Judge who dismissed the same vide his judgment dated 30.03.1995. Being aggrieved by the aforesaid dismissal of the appeal and the order passed by the Assistant Collector, the petitioner

preferred this writ petition.

Learned counsel for the petitioner has submitted that the petitioner had sought time to file reply but instead the learned Assistant Collector passed the order of attachment of the property. It is submitted that in fact the petitioner had filed the vakalatnama of his Advocate who had sought time to file reply and he had put his signatures on the notesheet for recording his attendance before the court. Learned counsel for the petitioner, therefore, submitted that the petitioner has been deprived of his right to contest the claim of the Bank and submit a reply to the notice issued by the Bank.

Learned counsel appearing on behalf of the Bank has submitted that what the learned Assistant Collector has done is only protected the interest of the Bank by securing the property by attaching the same during the pendency of the proceedings and the impugned order nowhere states that right of the petitioner to submit his reply to the notice has been closed by the learned Assistant Collector. In fact, the learned Assistant Collector had posted the case for 03.12.1994 and on the said date, the petitioner should have appeared and filed the reply.

Having heard learned counsel for the parties and having gone through the impugned order dated 01.10.1994, I am inclined to accept the submissions of the learned counsel for the respondent that in fact by the impugned order the learned Assistant Collector has only secured the interest of the respondent-Bank by ordering for attachment of the property pending the disposal of the case before him so that the property could be secured so that in case an order for recovery is passed against the petitioner borrower, the respondent-Bank may be in a position to recover the said amount from the property of the petitioner.

In view of the above, this writ petition is disposed of with the directions to the parties to appear before the learned Assistant Collector

and it would be open for the petitioner to submit his reply before the learned Assistant Collector. The parties are directed to appear before the learned Assistant Collector on 06.11.2006 and for this purpose no separate notice would be required to be issued by the learned Assistant Collector. On the said date, if the petitioner wants to submit any reply, he may do so. The learned Assistant Collector is expected to proceed in the matter in accordance with law.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.